

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

SUPREME JUDICIAL COURT
SJ-2018-_____

COMMONWEALTH)
)
) COMMONWEALTH'S EMERGENCY MOTION TO
v)
) STAY PENDING RESOLUTION OF
) ITS G.L. 211, §3 PETITION
EMORY SNELL)
)

Now comes the Commonwealth through the Cape and Islands District Attorney Michael O'Keefe and moves this Honorable Court to issue an Emergency Order to Stay this case pending a resolution of its Application for Interlocutory Appeal pursuant to G.L. 211, §3. The Commonwealth has attached an affidavit reflecting the circumstances and reasons to issue the stay, where the Court ordered the Commonwealth to disclose the discovery referenced in the attached motion by 7pm Wednesday, July 18, 2018. The Commonwealth states that it has this day filed a notice of appeal with the Superior Court, and orally moved for a stay, which was denied by Muse, J. The Commonwealth's 211/3 petition is attached.

Respectfully submitted,
Michael O'Keefe
District Attorney
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/s/Elizabeth A. Sweeney
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July 10, 2018

COMMONWEALTH OF MASSACHUSETTS

Now comes Assistant District Attorney Elizabeth Sweeney and states:

- 1) I am the Assistant District Attorney handling this 211/3 Petition. The defendant was convicted of first degree murder in 1995. See attached docket.
 - 2) The docket reflects the defendant has filed multiple motions for a new trial, and exhausted his direct appeal. *Commonwealth v. Emory Snell*, 428 Mass. 766 (1999)
 - 3) On December 5, 2017, the defendant filed a discovery motion requesting the personnel file of Dr. Zane, the Medical Examiner in this case.
 - 4) The defendant filed a third motion for a new trial in December of 2017, with multiple exhibits and expert affidavits. See attached exhibit. In March of 2018, The Commonwealth was ordered to respond and given a due date of May 15, 2018 which it filed its opposition.
 - 5) The Court held a status hearing in Suffolk Superior Court on June 20, 2018, where it set a date in Barnstable Superior Court, July 10, 2018, to discuss the discovery motions. Muse, J., was appointed in 2012.
 - 6) On June 27, 2018, the Commonwealth filed a Motion to Reconsider the Discovery Order to Disclose the Personnel file of Dr. Zane. The motion was signed onto by General Counsel for the Medical Examiner, ("OCME") Attorney Eric Hogberg.

7) On July 10, 2018, at the status hearing, Muse, J., found that the defendant's motion and affidavits raised a "substantial issue" and ordered the OCME and/or Commonwealth to review the personnel file of Dr. Zane, find the relevant documents germane to the discovery motion, turn those documents over to Judge Muse. The judge would then review them in camera, and then disclose relevant documents to defense counsel.

8) The Court ordered the OCME to review the personnel file and flag all relevant documents, and disclose them to the Court by Wednesday, July 18 at 7PM, as defense counsel is on vacation next week, and Muse, J., is retiring on August 16, 2018.

9) The defendant's motion for a new trial was marked today for a hearing on September 19, 2018. The defendant's motion will be assigned to a new judge in Barnstable Superior Court, due to Muse, J.'s retirement.

10) The Commonwealth filed a G.L. c. 211/3 motion and orally moved for a stay. Muse, J., denied the stay.

11) The Commonwealth then proceeded to file the "Emergency Stay" with this Honorable Court.

12) As of the time of the filing of this motion, 3:30 P.M., the discovery order has not been entered on the docket, per inquiry with the Barnstable Superior Court Clerk's Office and an online check. The Commonwealth will forward a copy of the order and docket to the Court as soon as it is available.

13) A stay will not prejudice the defendant, as the defendant's hearing is in September, the defendant has exhausted his appellate proceedings and his direct appeal. The trial judge from 1995 is no longer involved in the case.

14) The Commonwealth requests this Court issue the stay where the defendant's case involves multiple prior motions for a new trial, a direct appeal, many issues are waived, and the defendant has filed this motion multiple times (see entries on docket from 2012-2015). The stay will allow the Commonwealth to fully brief its interlocutory memorandum.

Signed under the pains and penalties of perjury, this 10 date of July, 2018.

/s/ Elizabeth A. Sweeney
Assistant District Attorney
Elizabeth Sweeney